

Message Text

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ACTION AF-18

INFO OCT-01 EUR-25 ISO-00 NEA-10 CIAE-00 DODE-00 PM-07

H-03 INR-10 L-03 NSAE-00 NSC-10 PA-03 RSC-01 PRS-01

SPC-03 SS-15 USIA-15 ACDA-19 IO-15 SY-10 OMB-01

USSS-00 DRC-01 /171 W

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R 281225Z SEP 73

FM AMEMBASSY KHARTOUM

TO SECSTATE WASHDC 7175

INFO AMEMBASSY BRUSSELS

C O N F I D E N T I A L KHARTOUM 2179

E.O. 11652: GDS

TAGS: PINS, SU

SUBJ: MAGISTERIAL INQUIRY OF BSO TERRORISTS: LEGAL COMMENT

1. BEGIN SUMMARY. ATTORNEY CONFIRMS INQUIRY REGARDES AS HAVING OFFICIALLY BEGUN SEPT. 25 AND WAS THEN ADJOURNED. PROCEDURAL IRREGULARITIES NOT LEGALLY IMPORTANT. JUDICIAL PROCESS MAY BE EXTENDED BY DEFENDANT USE OF NON-SUMMARY FORM MAGISTERIAL INQUIRY. END SUMMARY.

2. SUDANESE ATTORNEY STATES OPENING SESSION INQUIRY SEPT. 25 UNUSUAL IN SEVERAL RESPECTS I.E., LACK MAGISTERIAL CRACKDOWN ON PALESTINIAN STUDENT BEHAVIOR AND SPEECHES BY PROSECUTION AND DEFENDANTS WHICH BY-PASSED CERTAIN PROCEDURAL ELEMENTS. ACCEPTABLE EXPLANATION HOWEVER, WAS DESIRE MAGISTRATE AND PROSECUTION TO STRESS THAT LAW,NOT POLITICS,WILL PREVAIL DURING TRIAL. ATTORNEY ALSO CONFIRMED INQUIRY CAN BE DEFINED AS HAVING OFFICIALLY BEGUN AND THEN ADJOURNED UNTIL NOV. 13 SESSION.

3. ADDITIONAL ITEMS OF LEGAL OR OTHER INTEREST ARE AS FOLLOW:

(A) ATTORNEYS: TWELVE OF ORIGINAL 22 SUDANESE DEFENSE

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ATTORNEYS ARE UNDER ARREST. SUDAN BAR SEEKING REPLACEMENTS.

SHAFIQ AL-ARASHIDAT DID NOT RPT NOT ATTEND TRIAL THUS INDIRECTLY CONFIRMING FBIS REPORT HE WAS REFUSED VISA. SOME NON-SUDANESE ATTORNEYS PRESENT, BUT ATTORNEY COULD NOT YET IDENTIFY THEM. NON-SUDANESE ATTORNEYS WILL BE PERMITTED ATTEND SESSION AND PROVIDE ADVICE, BUT THEY WILL NOT BE PERMITTED PARTICIPATE DIRECTLY. IN ATTORNEY'S OPINION, SUDANESE DEFENSE TEAM IS ILL-ORGANIZED AND HAS NOT APPROACHED TASK PROFESSIONALLY.

(B) DATE: DATE OF NOV. 13 HAS NO PARTICULAR HISTORIC OR RELIGIOUS SIGNIFICANCE. IT IS NOT UNUSUAL FOR INTERESTED PARTIES TO CONSULT IN ADVANCE ON DATE FOR ADJOURNMENT.

(C) FORM OF INQUIRY: ATTORNEY OUTLINED THAT MAGISTERIAL INQUIRY HAS TWO FORMS: SUMMARY AND NON-SUMMARY. IN FORMER, WITNESSES MERELY CERTIFY THAT THEIR PREVIOUS WRITTEN STATEMENTS ARE IN FACT CORRECT. IN LATTER, WITNESSES MUST REITERATE STATEMENTS ORALLY AND ARE SUBJECT TO CROSS EXAMINATION. MURDERERS ORIGINALLY OPTED FOR SUMMARY FORM, BUT ATTORNEY UNDERSTANDS THEY HAVE NOW REQUESTED AND WILL RECEIVE NON-SUMMARY INQUIRY WHICH CAN EXTEND JUDICIAL PROCESS. HE NOTED ACCUSED ALSO HAVE RIGHT TO APPEAL A MAGISTRATE'S DECISION TO PREFER CHARGES. IF APPEAL BASED ON POINT OF LAW, IT CAN BE CARRIED TO SUPREME COURT. THUS, MAXIMUM JUDICIAL PROCESS STEPS COULD INVOLVE (1) NON-SUMMARY MAGISTRAL INQUIRY, (2) APPEALS COURT, (3) SUPREME COURT, (4) HIGH COURT TRIAL, (5) APPEALS COURT, (6) SUPREME COURT, (7) PRESIDENTIAL CONFIRMATION, AND (8) IMPLEMENTATION OF SENTENCES. WITH ASSORTED DELAYS AND ADJOURNMENTS, CASE OBVIOUSLY CAN CONSUME EXTENDED PERIOD.

(D) DELAYS: ATTORNEY NOTED HIS UNDERSTANDING MURDERERS ORIGINALLY WISHED TRIAL PROCESS ACCELERATED, BUT HAVE RECENTLY CHANGED THEIR MINDS. DEFENSE TACTIC FOR NOT SEEKING POSTPONE OPENING MAGISTERIAL INQUIRY SEPT. 25 WAS TO EMBARRASS GOS OVER ARRESTED DEFENSE ATTORNEYS. HE UNDERSTANDS GOS FAVORS RAPID PROGRESS OF TRIAL IN LONG-TERM, BUT WAS AGAINST HOLDING SEPT. 25 SESSION PRECISELY BECAUSE OF POLITICAL SENSITIVITY OVER IMPRISONED ATTORNEYS. (THIS ALSO WAS APPARENT CAUSE FOR GOS HINDRANCE OF ARAB ATTORNEYS TO ATTEND SESSION. GOS ALSO TURNED SOME FOREIGN NEWSMEN AWAY AT AIRPORT.)

4. ROLE OF ATTORNEY (STATE 185575): ATTORNEY HAS NOW AGREED SERVE AS OUR LEGAL ADVISOR. HOWEVER, HE HAS REQUESTED HIS ROLE CONFIDENTIAL

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BE KEPT CONFIDENTIAL. ASIDE FROM WISHING HONOR HIS CONCERNS OVER PERSONAL SECURITY, EMB BELIEVES QUIET ROLE MAY ALSO PROVIDE HIM GREATER ACCESS TO INFO THROUGH INFORMAL DISCUSSIONS HIS COLLEAGUES. ALTHOUGH SUBJECT UNLIKELY ARISE, EMB REQUESTS DEPT. AVOID REFERENCE TO OR IDENTIFICATION OF LEGAL ADVISOR.

5. COMMENT: WHILE CASE CLEARLY LIKELY DRAG ON LONGER THAN WE WOULD WISH, MIGHT PROVE HELPFUL IN DEALING WITH ANY

CRITICISM ON THIS SCORE WHICH MAY ARISE IN US TO MAKE
FOLLOWING POINTS AS APPROPRIATE: (1) GOS COMMITMENT SEE
JUSTICE DONE IS CLEAR; (2) ACCUSED DESIRE TAKE ADVANTAGE ALL
CONCEIVABLE LEGAL PLOYS NOT UNHEARD OF IN OTHER COUNTRIES;
(3) GRADUAL EXHAUSTION LEGAL MANEUVERS NOW SHOULD REDUCE
SUBSTANTIVE BASIS APPEALS PROCEDURE; AND (4) MEANWHILE
ACCUSED REMAIN IN JAIL, NOT OUT ON BAIL.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 28 SEP 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: willialc
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973KHARTO02179
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS BREWER
Errors: N/A
Film Number: n/a
From: KHARTOUM
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t1973094/aaaaacmj.tel
Line Count: 123
Locator: TEXT ON-LINE
Office: ACTION AF
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: willialc
Review Comment: n/a
Review Content Flags:
Review Date: 23 OCT 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23-Oct-2001 by shawdg>; APPROVED <01-Nov-2001 by willialc>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MAGISTERIAL INQUIRY OF BSO TERRORISTS: LEGAL COMMENT
TAGS: PINS, SU
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005